



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE890

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Mariana Islands Training and Testing Study Area and the Atlantic Fleet Training and Testing Study Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of modified Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that modified Letters of Authorization (LOAs) have been issued to the U.S. Navy (Navy) for the take of marine mammals incidental to training and testing activities conducted in the Mariana Islands Training and Testing (MITT) Study Area and the Atlantic Fleet Training and Testing (AFTT) Study Area. These modifications reflect changes to Navy watchstander (lookout) reporting requirements, which do not affect current mitigation measures, for observed behavior of marine mammals during Major Training Exercises (MTEs) in the MITT and AFTT study areas.

DATES: MITT: Effective through April 3, 2020; AFTT: Effective through November 13, 2018.

ADDRESSES: The LOAs and supporting documentation are available online at: www.nmfs.noaa.gov/pr/permits/incidental/military.htm. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: John Fiorentino, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

The National Defense Authorization Act of 2004 (Public Law 108-136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as applies to a “military readiness activity” to read as follows (section 3(18)(B) of the MMPA, 16 U.S.C. 1362(18)(B)): “(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild” (Level A Harassment); or “(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered” (Level B Harassment).

Summary of Request

On December 4, 2013 and August 3, 2015, NMFS issued regulations under the MMPA governing the unintentional taking of marine mammals incidental to training and testing activities conducted in the AFTT and MITT study areas, respectively (78 FR 73010; 80 FR 46112). These regulations allowed us to issue LOAs for the incidental take of marine mammals during the Navy’s specified activities and timeframes, set forth the permissible methods of taking, set forth other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and set forth requirements pertaining to the monitoring and reporting of the incidental take. On June 3, 2015, proposed changes to the watchstander reporting requirements for AFTT and MITT (and other active Navy Phase II training and testing rulemakings—*i.e.*, Hawaii-Southern California Training and Testing; Gulf of Alaska Temporary Maritime Activities Area Training) were included in the proposed rule for the Navy’s training and testing activities

in the Northwest Training and Testing (NWTT) Study Area (80 FR 31738). There were no comments received on the proposed watchstander modifications during the 45-day public comment period for the NWTT proposed rule, and NMFS issued regulations reflecting the new watchstander reporting modifications on November 24, 2015 (80 FR 73556).

Authorization

We have issued modified LOAs to the Navy authorizing the take of marine mammals incidental to training and testing activities, as described above; no changes to the LOAs other than the watchstander reporting modifications have been made. With these watchstander modifications, the Navy would no longer be required to report individual marine mammal sighting information when mitigation is not being implemented during the MTEs. After five years of collecting marine mammal sighting data for all animals sighted during MTEs, NMFS and the Navy have determined that this data set does not provide for any meaningful analysis beyond that which may be possible using mitigation-related observations alone because the Navy is unable to identify species information. NMFS and the Navy have thoroughly investigated several potential uses for the data prior to reaching this conclusion. Additionally, as discussed during the adaptive management process, this reporting requirement places an administrative burden on ships' watch teams, which is undue, given that the information collected does not contribute to any meaningful analysis. The Navy will continue to collect marine mammal sighting data during MTEs for every instance when any form of mitigation is employed, such as powering down or securing sonar, maneuvering the ship, or delaying an event—in other words, in instances where animals are closer to the sound source around which

mitigation measures are implemented. This data is useful in supporting mitigation effectiveness analyses and also may be helpful in supporting an understanding of the frequency with which marine mammals (generally, not by species) may be encountered or detected in close proximity to a particular source (*e.g.*, where the likelihood of auditory or other injury is higher).

Dated: September 20, 2016.

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Director, Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2016-22997 Filed: 9/23/2016 8:45 am; Publication Date: 9/26/2016]